

Streamside Setback Committee
C/o Ravalli County Planning Department
215 South Fourth Street, Suite F
Hamilton, Montana 59840

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SEP 10 2007
IC-07-09-1155
Ravalli County Planning Dept.

September 7, 2007

Thru: Ravalli County Planning Department

To: Board of Ravalli County Commissioners (BCC)
215 South Fourth Street, Suite F
Hamilton, Montana 59840

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SEP 10 2007

Ravalli County Commissioners

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Re: Proposed Interim Streamside Setback Regulation

Dear Commissioners and Staff,

In accordance with the Board of County Commissioners' (BCC) Instruction Letter dated July 30, 2007 and consistent with my subsequent presentation to the BCC, herein submitted is the Streamside Setback Committee's (SSC) approved Proposal, including the Resolution for final County Commissioners' enactment, of the Interim Streamside Setback Regulation.

Please note that in order to meet the September 7, 2007 suspense, your Streamside Setback Committee gave a **Herculean Effort** and has produced a product that it is believed will readily form the basis for your expeditious finalization of an Interim Regulation.

Too, please note that during the evolution of this Proposal the SSC hosted Public Meetings on August 7, 14, 21, 28, and on September 4, and September 6, 2007. Intertwined in this development period were several Subcommittee creation and refinement meetings.

At the September 6, 2007 the SSC members unanimously voted approval and forwarding of this Proposal for County Staff review and enactment into law by the Commissioners.

During the public meetings a good deal of Public Comment was received. To the extent possible the Public Input was incorporated into this Proposal. Although this input presented a wide range of comments, the most significant was the questioning of the emergency justification.

The main thrust here “was did the County actually have specific data to support a declaration of an emergency citing where the damaging construction was being hurried into place.” This question was redirected for resolution during the Commissioners’ Public Meeting Process.

Additional Public Input and questions of note included the following:

- a. Is there going to be a “Grandfather Provision” in the final regulation which will ensure long standing conditions on private property will not be effected by this Proposal?
- b. Is there going to be an adjustment to the current Septic Permitting process to include the requirement, as now required in this Proposal, for a site plan showing the location of proposed buildings?
- c. Is there going to be consideration given to allow land owners to re-build their residence, without a variance being granted, if it is destroyed more than once due to flooding?
- d. Is this regulation going to restrict water right owners from access to their water rights particularly from irrigation ditches?
- e. Is this Proposal going to prevent maintenance of land adjacent to irrigation ditches?
- f. Is this Proposal going to prevent maintenance of and/or installation of structures designed to enable control and access to water rights particularly irrigation ditches?
- g. What will be the impact of designating buffer zones in the final regulations on the prior citing of residential buildings?
- h. Under this Proposal will land owners be able to build access roads and bridges through setback zones to access their water rights?
- i. Under this Proposal how much private/owner property rights will be forfeit, and what right does the County have to do this?
- j. Is there going to be written criteria established that clearly defines what “reasonable” and what “adversely” mean as regards this Proposal?
- k. Should Wetlands be included in this Proposal, at all, since this is a Streamside Setback Regulation?
- l. Shouldn’t the Variance procedure provide for “Conditional Uses” specifically?
- m. Is the County going to document “All” current site condition that would be in violation of this Proposal after it is enacted so that there will be a permanent record of non-conforming but authorize conditions?
- n. Why do we need this regulation, anyway?
- o. Who is going to pay for the fencing to keep cattle, etc. out of the setback zone?
- p. In regard to Construction on Public land, do the same requirements as are in this Proposal apply to that?

- q. Will there be any additional requirements for subdivisions, both in process and future applications, as a result of this Proposal including more specific/definitive building envelop designations?
- r. Will new agricultural roads need a variance if they pass through setback zones?
- s. Can fire clearing for resident and other structure protection be done under this proposal without a variance?
- t. Can non-conforming irrigation structures be maintained without a variance?

As noted, most of these issues and questions have been addressed through changes in this Proposal.

Although the SSC members attempted to respond and/or resolve, as they arose, these points, they most assuredly will come up again. Hence it is **recommended** that these be evaluated further as the review process of the Proposal progresses. It is, also, recommended that the appropriate County Staff be ready to respond to these areas during the formal Public Involvement process associated with final approval.

To aid in the finalization process, it is suggested that an enhanced review be focused on several Proposal Sections. These Sections are Sections 3 (Purpose), 4 (Intent), 6 (Definitions), 7 (Setback Requirements), 11 (Variances), 12 (Interim Streamside Setback Zoning Board of Adjustments) and 13 (Enforcement).

Recognizing that the thrust of this Regulation is to preclude detrimental construction, it is also recommended that the following Sections be intently reviewed in conjunction with the accompanying comments:

1. Section 7's Setback Distances for each stream be examined with a final determination made to see, when one considers the dimensions of most stream side properties in the County, if these distances,
 - a. generate to strict a criteria on private land owners,
 - b. create an excessive unwarranted burden on private property ownership,
 - c. create an extensive additional work load on the County administration to handle what may assuredly be a plethora of variance applications, and
 - d. are really practical when one considers the distribution of wetlands and riparian areas on individual properties.
2. Section 11, s Variance Requirement:
 - a. requires a positive or non applicable finding by a Zoning Board of Adjustments on all Variance Criteria. **These criteria make it necessary for a Board to evaluate 100% of the Criteria before the Board could Issue a Variance to a property**

owner. This 100% evaluation requirement may not be **viable when one considers the impact on the County Staff's administrative capacity and on the applicant's resources.**

- b. too, some of the Variance criteria may be seen as "stand alone" provisions. A **Public question arose on this point. "If this be the case then should a property owner still have to meet the other five criteria in order to receive a variance?"**

("Stand Alone" by definition meaning that if met a variance should be granted. **For Example:** If "Enforcement of these Regulations would result in unreasonable hardship to the Owner as determined by the Ravalli County Board of Adjustments based on all information submitted to the Board by the Property owner or their representative, and")

3. **Section 12's Zoning Board of Adjustments Requirement:**

Here the Proposal is making a provision for administering the regulation after a property owner has made an application for a Variance. Two key points are involved here.

- a. **First**, there needs to be a procedure established for an owner to apply for a variance and receive a variance, and
- b. **Second**, this Proposal only notes that a Zoning Board of Adjustment's is necessary to process applications and does not address how this is to be established.

Suggestion: A solution for this provision may be for the Commissioners to establish such a Board within the Streamside Setback Committee by using the Committee's assets and expertise.

Although there are many pros and cons to this approach, a main and significant benefit could be that the Committee, having the full responsibility for Streamside Setback, could insure:

- a. uniformity of application of the Regulation,
- b. the development, enhancement and application of practical experience, which could readily go into the creation of the Final Streamside Setback Regulation, and
- c. that all the SSC's expertise could be readily drawn upon to ensure supportable decisions.

4. **Section 13's Enforcement Requirement:**

As the Streamside Setback Committee does not have expertise in this area, this Section was not developed. **Noting that any regulation without an enforcement**

provision is not completely effective, it is recommended that this requirement be addressed and created, under the management of the County's Planning Department, by the County's enforcement departments before this Proposal goes into the Public Process.

Please address any questions on this Proposal to the undersigned. Thank You!

Respectively submitted on behalf the Streamside Setback Committee,

A handwritten signature in black ink, reading "Clayton Dethlefsen". The signature is fluid and cursive, with the first name "Clayton" and last name "Dethlefsen" clearly legible.

Clayton Dethlefsen
Committee Chairperson